

CHAPTER 03 ADMINISTRATION¹

ARTICLE I. IN GENERAL

Sec. 3-1. Definitions in General

The definitions in A.R.S. tit. 9 (A.R.S. § 9-101 et seq.) shall be applicable to this Chapter unless a term is specifically defined in this Chapter, or unless the context requires otherwise.

Sec. 3-2. Definitions Pertaining to this Chapter

For the purposes of interpretation of this Chapter, the following words and phrases shall mean:

- (a) *Clerk* – the office of the city clerk, including duly appointed deputies thereof.
- (b) *Director* – the appointed head of a department as delineated on the City's organizational chart.
- (c) *Manager* – the office of the city manager.

Secs. 3-3--3-10. Reserved.

ARTICLE II. MANAGER

Sec. 3-11. Office Created²

The office of the manager is hereby created. The manager shall be appointed by a vote of at least four members of the council at any regular or special meeting of the city council and such appointment shall be for an indefinite term. The manager shall be chosen on the basis of his executive and administrative qualifications and his knowledge of accepted practice with respect to the duties of his office as set forth in Section 3-21.

Sec. 3-12. Removal Procedure³

The manager serves at the pleasure of the council and may be removed for any reason, with or without cause, by the vote of at least four of the members of the city council at any regular or special meeting of the council.

¹ Amended Chapter 03 by Ordinance 10-06 adopted 5/20/2010

² Amended Chapter 03 by Ordinance 11-04 adopted 2/15/2011

³ Amended Chapter 03 by Ordinance 11-02 adopted 2/15/2011

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Sec. 3-13. Resignation

The manager shall provide the council with thirty (30) days written notice of his intention to resign his position. The manager shall assist the council in the recruitment and selection of a replacement, if requested by the council. In the event of resignation due to health reasons, the period of written notice shall be determined in conference between the city manager and the council.

Sec. 3-14. Agreements on employment

Nothing in this Article shall be construed as a limitation on the power or authority of the council to enter into any supplemental agreement with the manager delineating additional terms and conditions of employment not inconsistent with the provisions of this Code or of state statutes.

Sec. 3-15. Residence

At the time of appointment, the person so appointed as manager need not be a resident of the city or the state, but within twelve months of his appointment he shall reside within the city.

Sec. 3-16. Eligibility

No member of the council shall be eligible to be appointed to the office of manager until one year has elapsed after such member has ceased to be a member of the council.

Sec. 3-17. Bond

The manager shall furnish a surety bond as may be set periodically by the council. Such bond shall be conditioned upon the faithful performance of his duties as described in this division. Any premium for such bond shall be a proper charge against the city.

Sec. 3-18. Compensation

The manager shall receive such compensation as may be set by the council from time to time.

Sec. 3-19. Assistant City Manager

The manager may appoint one or more assistant city managers who shall serve at the pleasure of the manager and shall have such duties as may be delegated by the city manager.

Sec. 3-20². Acting City Manager

In the event of the absence or disability of the manager, his powers and duties shall be performed by the following officers of the city and they are so appointed in the following order as each succeeding officer may be absent or disabled:

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- (a) Assistant city manager
- (b) City clerk
- (c) City attorney

Sec. 3-21². Powers and Duties

The manager shall be the chief administrative officer and head of the administrative branch of the city. He shall be responsible to the council for the proper administration of all affairs of the city and shall have the power and be required to:

- (a) Execute, on behalf of the council, general administrative supervision and control of the affairs of the city.
- (b) Attend meetings of the council with a duty of reporting on or discussing any matter concerning the affairs of the departments, boards, services or activities under his supervision, upon which, in his judgment, the council should be informed.
- (c) Appoint and, when necessary, suspend or remove all employees of the city, except for the appointive officers enumerated in Article III of this Chapter or elsewhere in this Code, pursuant to the city's personnel rules and regulations, this Code, and ordinances of the city.
- (d) Appoint, upon the advice and consent of the council, those officers enumerated in Article III of this Chapter, except for the city attorney and the city magistrate who shall be appointed by the council. Those officers so enumerated shall serve at the pleasure of the manager and may be removed by the manager with or without cause.
- (e) Coordinate the administrative functions and operations of the various departments, boards, divisions and services of the city government, and on its behalf, carry out policies, rules, regulations, ordinances and provisions of this Code relating to the administration of the affairs of such departments, boards, divisions or services.
- (f) Cause to be prepared and submitted to him by each department, board, division or service of the city government, itemized annual estimates of expenditures required by them for capital outlay, salaries, wages and miscellaneous operating costs; compile same into a preliminary consolidated city budget; and submit the same to the council annually on the dates specified by them, with his recommendation as to any increases, cancellations, transfers or changes in any of these items included in the preliminary budget.
- (g) Supervise the expenditures of all departments, divisions or services of the city government in accordance with state law, this Code, and other ordinances, resolutions, policies and procedures of the city.
- (h) Develop and organize necessary improvement projects and programs and aid and assist the council and the various departments and boards in carrying the same through to a successful conclusion.
- (i) Investigate the affairs of the city and any department or division thereof. Investigate all complaints in relation to matters concerning the administration of the city government.
- (j) Make or cause to be made and keep a current inventory of all the personal and real property owned by the city and recommend to the council the purchase of new machinery, equipment and supplies whenever, in his judgment, the same may be obtained under terms and conditions which are most advantageous to the city.

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(k) Exercise general oversight over all public buildings, public parks and other public property which are under the control and jurisdiction of the city.

(l) Ensure that all laws and ordinances of the city are duly enforced and that all franchises, contracts, permits and privileges granted by council are faithfully observed and to report any failure in that regard to the council, which shall give such instruction and direction as it may desire for remedial, corrective or terminating action by the manager.

(m) Devote his entire time to the discharge of his official duties.

(n) Perform such other duties as may be required of him by the council not inconsistent with the laws of the state or the provisions of this Code and ordinances of the city.

Sec. 3-22. Policymaking

The manager shall not exercise any policymaking or legislative functions, nor attempt to commit or bind the council to any action, plan or program requiring the official action of the council.

Sec. 3-23. Internal Relations²

(a) Council-Manager Relations. Neither the council nor any of its members shall direct or request the appointment of any person to, or removal from, office by the city manager or any of the manager's subordinates or in any manner, other than for the purpose of advice and consent as provided for in this Code, take part in the appointment or removal of officers and employees in the administrative services of the city. Except for the purpose of inquiry, the council and its members shall deal with the administration solely through the city manager and neither the council nor any member thereof shall give orders to any subordinates of the city manager, either publicly or privately.

(b) Attendance at Commission Meetings. The manager may attend any and all meetings of all commissions, boards, committees or task forces created by the council, upon his own volition or upon direction of the council. At such meetings which the manager attends, he shall be heard by such commissions, boards, committees or task forces as to all matters upon which he wishes to address the members thereof, and he shall inform said members as to the status of any matter being considered by the council, and he shall cooperate to the fullest extent with the members of all commissions, boards, committees or task forces appointed by the council.

Sec. 3-24. Authority to Contract

The manager is authorized to negotiate and execute contracts, applications and agreements for the purchase of goods and services or to secure intergovernmental funding on behalf of the city without prior council approval subject to the following conditions:

(a) All contracts, applications and agreements shall be reviewed and approved as to form by the city attorney prior to execution subject to Section 2-91 of this Code.

(b) All goods and services that are the subject of such contracts, applications and agreements shall be procured in compliance with Article IV of this Chapter.

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(c) No contract, application or agreement may be executed under the authority of this Section which would require council to appropriate budgetary funds in any subsequent fiscal year.

Sec. 3-25. Authority to Settle Claims

(a) The manager is authorized to negotiate and settle on behalf of the city claims and disputes brought against the city, its officers, appointees and employees, subject to the following conditions:

- (1) The manager has investigated questions of liability and damages raised by the claim and has determined a reasonable dollar value of the claim.
- (2) The claim and any proposed settlement has been reviewed and approved by the city attorney.
- (3) The settlement is conditioned upon an appropriate written release by the claimant.

(b) The settlement authority of the manager is limited as follows:

- (1) For claims against the city which are covered by the city's insurance, the manager is authorized to pay any deductible or self insured retention assessed by the insurance carrier, if such amount does not exceed twenty five thousand dollars (\$25,000.00), contingent upon the review and approval of the city attorney;
- (2) For claims presented to the city or disputes involving the city, the manager shall have authority to settle such claims and disputes for an amount not to exceed twenty five thousand dollars (\$25,000.00). Such settlements shall be reviewed and approved by the city engineer (for easement and property acquisitions and condemnation actions initiated by the city only) and the city attorney.

(c) Settlement of all other claims which cannot be resolved within the parameters set forth above shall be submitted to the council for review and approval or denial.

(d) The manager shall submit to the council a quarterly report of all claims settled under this authority.

Secs. 3-26—3-40. Reserved

ARTICLE III. DEPARTMENTS AND OFFICERS OF THE CITY

Division I. Generally

Sec. 3-41. Other Officers and Departments

(a) The manager may make a study regarding the creation, consolidation, or elimination of such offices, divisions and departments as he deems necessary for the efficient operation of the city and present the results of such study and make recommendations to the council for its consideration and approval.

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(b) The manager shall maintain an organizational chart which accurately reflects the organizational structure under which municipal services are performed and present such to the council annually as part of the budget process for their approval.

Sec. 3-42. Contracted Officers

The city may, when it is deemed to be in the best interest of the city, contract with qualified individuals or firms, in lieu of employing individuals, for the provision of services required by this Code, state law or other authority.

Sec. 3-43. Vacancies; Deputies; Holding More Than One Office

(a) The powers and duties of any of the offices enumerated in this Article may be performed by a deputy upon authorization of the city manager.

(b) It shall be lawful for one person to hold more than one office, but such person shall be compensated only for one office to which he or she has been regularly appointed.

Secs. 3-44—3-50. Reserved

Division II. City Clerk

Sec. 3-51. Office Created

There is hereby created the office of the clerk.

Sec. 3-52. Appointment

The city clerk shall be appointed by the manager and may be removed by the manager with or without cause. The clerk shall be chosen on the basis of his executive, professional and administrative qualifications and his knowledge of accepted practice with respect to the duties of his office as set forth in Section 3-54.

Sec. 3-53. Bond

Before entering upon the duties of the office, the clerk shall execute a bond in such amount as is provided by statute, conditioned upon the faithful performance of his duties. Any premium for such bond shall be a proper charge against the city.

Sec. 3-54. Duties

(a) **Records.** The clerk shall keep a true and correct record of all business transacted by the council and any other records that either pertain to the business of the city or that the council directs. The clerk shall number, plainly label and file separately in a suitable cabinet and/or a digitized format all resolutions, ordinances, notices, deeds, surveys, leases, paid and unpaid vouchers, inventories, letters, orders and other documents of whatever nature.

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(b) **Public Inspection of Records.** The clerk shall keep convenient for public inspection all public records and public documents under his control, as provided by state statute.

(c) **Minutes.** The clerk shall prepare or cause to be prepared all minutes of council proceedings and ensure their correctness and accuracy.

(d) **Ordinances, Resolutions, Budgets and Notices.** The clerk shall process, record, file, publish and, if required by state statute, post all ordinances, resolutions, budgets and notices that may be passed by the council.

(e) **Election Official.** The clerk shall be the city election official and perform those duties required by state statute.

(f) **Licenses.** The clerk shall issue or cause to be issued all licenses that may be prescribed by state statute or this code.

(g) **Seal.** The clerk shall be the custodian of the city seal and shall affix its impression on documents whenever this is required.

(h) **Additional Duties.** In addition to the duties herein provided, the clerk shall perform such other duties and functions as may be conferred upon the clerk by the manager and as may be required by statute or ordinance.

Secs. 3-55—3-60. Reserved

Division III. City Attorney

Sec. 3-61. Office Created

There is hereby created the office of the city attorney.

Sec. 3-62. Appointment

The city attorney shall be appointed by a majority vote of the council.

Sec. 3-63. Duties

The city attorney shall:

(a) Attend all meetings of the council.

(b) Prepare or review all ordinances, resolutions, contracts and similar documents before consideration by the council.

(c) Provide legal advice to the council and the city staff.

(d) Attend to all suits and proceedings in which the city may be legally interested, provided that the council shall have control of all litigation of the city and may employ other attorneys to take charge of any litigation or to assist the city attorney therein.

(e) Prosecute, on behalf of the people, all criminal cases arising from violations of this Code and state law over which the municipal court has jurisdiction.

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Secs. 3-64—3-70. Reserved

Division IV. Financial Services

Sec. 3-71. Office Created

There is hereby created the office of the director of financial services.

Sec. 3-72. Appointment

The director of financial services shall be appointed by the manager and may be removed by the manager with or without cause. The director shall be chosen on the basis of his executive, professional and administrative qualifications and his knowledge of accepted practice with respect to the duties of his office as set forth in Section 3-73.

Sec. 3-73. Duties

The director of financial services shall be the chief accounting officer of the city and shall be the head of the financial services department of the city and shall have the power to and is required to do the following:

- (a) **Administration of Financial Affairs.** He shall have charge of the administration of financial affairs of the city under the direction of the city manager;
- (b) **Budget.** He shall compile the budget expense and income estimates for the city manager;
- (c) **Accounting System.** He shall maintain a general accounting system for the city government and of each of the offices, departments and agencies;
- (d) **Disbursements.** He shall supervise and be responsible for the disbursements of all monies and have control of all expenditures, audits and approve before payment of all bills, invoices, payrolls, demands or other charges against the city government and with the advice of the city attorney, when necessary, determine the regularity, legality and correctness of such claims, demands or charges to ensure that budget appropriations are not exceeded;
- (e) **Purchasing.** He shall serve as the purchasing director and shall have responsibility of all purchases of goods and services made by or on behalf of the city. Such administrative duties may be delegated to other staff as considered necessary through a written memorandum to that effect.
- (f) **Other Functions.** He shall perform such other functions and have such other responsibilities as the city manager may from time to time specify or such other functions and responsibilities as may be prescribed from time to time, by action of the city council; and
- (g) **Duties as Treasurer.** The director of financial services shall hold the office of treasurer and receive and safely keep all monies that come to the city and pay out the same and when authorized by the council or the city's ordinances and resolutions.

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Secs. 3-74—3-80. Reserved

Division V. City Engineer

Sec. 3-81. Office Created

There is hereby created the office of the city engineer.

Sec. 3-82. Appointment

The city engineer shall be appointed by the manager and may be removed by the manager with or without cause. The city engineer shall be chosen on the basis of his executive, professional, and administrative qualifications and his knowledge of accepted practice with respect to the duties of his office as set forth in Section 3-83.

Sec. 3-83. Duties

The city engineer shall have charge of the city streets, sewers and waterworks and shall perform such duties as may be required of him by law and such other duties as the manager may deem necessary.

Secs. 3-84—3-90. Reserved

Division VI. Police Department

Sec. 3-91. Creation; composition; police chief's authority

There is hereby created the police department, which shall consist of the police chief, who shall be the head of the department, and all employees assigned thereto. All such employees shall perform their duties subject to the supervision of the police chief, who shall operate under the direction of the manager and report to the manager or his designee. The police chief shall supervise the department in accordance with the personnel policies of the city and shall exercise such powers and perform such duties as are customarily conferred and required by this Code, applicable ordinances, resolutions or lawful directives. The police chief shall be appointed by the manager and may be removed by the manager with or without cause.

Sec. 3-92. Status of Members

Each member of the police department shall have all the responsibility, authority and liability prescribed by statute or ordinances for police officers.

Sec. 3-93. Rules and Regulations

The police chief is delegated the authority to adopt general orders related to standard operating procedures for the department. Such general orders shall be binding on employees of

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the department. The general orders may cover uniforms and equipment to be worn or carried, hours of service and similar matters necessary or desirable for the better efficiency of the department. General orders shall not modify personnel policies of the city.

Sec. 3-94. Powers and Duties

It is the duty of the police department, under the direction of the police chief to:

- (a) Enforce this Code and the state statutes within jurisdictional limits as conferred by law and charge the violators of same.
- (b) Render such account of the police department, its duties and receipts as may be required by the council, and keep records of the office open to inspection by the council at any time except as prohibited by law.
- (c) Investigate criminal acts occurring within its jurisdiction and file the necessary reports.
- (d) Cooperate with federal, state and city prosecutors in the prosecution of criminal matters resulting from the investigative or enforcement duties of the police department.
- (e) Direct traffic and ensure the orderly flow thereof and investigate and make reports of traffic accidents as required by federal and state law.
- (f) Cooperate with the city engineer in conducting studies of accidents and determining remedial measures.
- (g) Any peace officer or duly authorized agent of the city may stop and detain a person as is reasonably necessary to investigate an actual or suspected violation of any provision of this Code, and to serve a copy of the traffic complaint for any alleged civil or criminal violation of this Code.
- (h) Perform such additional duties as may be required by the city manager or council.

Sec. 3-95. Answering Calls Outside of the City

The members of the police department of the city are duly authorized to answer calls for aid and assistance beyond the corporate limits of the city pursuant to mutual aid agreements and state statutes.

Sec. 3-96. Police Reserve Unit; Creation; Organization; Limits of Rules and Regulations

The council may, by resolution, create and establish a police reserve unit in addition to the regular police department. Such reserve unit may be dissolved in the same manner as it is created and established. The police reserve unit shall be organized and structured and its members qualified and determined under such rules and regulations as may be established by the police chief with the approval of the council. All such rules and regulations shall be subject to the following conditions:

- (a) All reserve unit personnel shall be selected on the basis of merit and fitness under such examinations or conditions as the police chief, with the approval of the manager, may establish. The police chief shall require such medical and physical examinations as are necessary to ascertain the physical fitness of all applicants.
- (b) All reserve unit personnel shall not be subject to the personnel policies of the city nor shall they be entitled to any privileges under such personnel policies.

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(c) All reserve unit personnel shall be appointed by the police chief with the approval of Arizona P.O.S.T.

(d) Such personnel may be suspended or discharged at any time by the police chief with or without cause.

Sec. 3-97. Unarmed Police Aides and Traffic Investigators

(a) Unarmed police aides may be employed or utilized by the police department and shall be empowered to commence an action or proceeding before a court or judge for any violation of city ordinances or this Code regulating the standing or parking of vehicles. The authority of the unarmed police aide shall be to enforce ordinances regulating the standing or parking of vehicles.

(b) Unarmed police aides may also serve as traffic investigators who may:

(1) Investigate traffic accidents within the city;

(2) Commence an action in the Maricopa Municipal Court by filing a citation for any violation of a state statute or this Code relating to such traffic accidents.

Sec. 3-98. Contract for Police Protection

In lieu of establishing or maintaining a police department, the city may enter into an intergovernmental agreement or contract for the provision of police protection.

Secs. 3-99—3-110. Reserved

Division VII. Fire Department

Sec. 3-111. Creation

There is hereby created a fire department.

Sec. 3-112. Composition; Fire Chief's Authority

The fire department shall consist of the fire chief, who shall be the head of the department and all staff officers, firefighters and employees assigned thereto. All staff officers, firefighters and employees shall perform their duties subject to the direction of the fire chief, who shall operate under the direction of the manager or his designee. The fire chief shall supervise the fire department in accordance with the personnel policies of the city, and shall exercise such power and perform such duties as are customarily conferred and required by this Code, applicable ordinances, resolutions or lawful directives. The fire chief shall be appointed by the manager and may be removed by the manager with or without cause.

Sec. 3-113. Powers and Duties of Fire Chief

(a) It shall be the duty of the fire chief to:

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- (1) Be responsible for the personnel, morale and general efficiency of the fire department.
 - (2) Direct the activities and operations of the fire department to protect life and property through:
 - (i) fire suppression;
 - (ii) fire code enforcement;
 - (iii) arson investigation and fire cause determination;
 - (iv) fire and life safety education;
 - (v) emergency medical and rescue services;
 - (vi) community emergency preparedness;
 - (vii) hazardous materials response.
 - (3) Plan and control department activities including recruitment of personnel and purchase of equipment.
 - (4) Keep records and other information of the department open as may be required by federal, state and local laws, and furnish such information upon request in accordance with federal, state and local regulations. Records shall be kept secure and disclosed only in accordance with law and destroyed in accordance with published records schedules.
 - (5) Enforce or cause to be enforced all codes, ordinances, laws and regulations of the city and state, insofar as they pertain to fire and life safety.
 - (6) Prepare and administer the budget for the department.
 - (7) Serve as emergency services planner and coordinator in developing and maintaining plans, managing resources and responding to federal, state and local emergencies.
- (b) The fire chief or his designee shall be present at all fires. During the progress of a fire, the authority of the fire chief shall be absolute in all matters directly concerning the extinguishment of the fire and the disposition of property endangered by it.

Sec. 3-114. Emergency Response

The fire department is authorized to respond to all calls for emergency service within the corporate limits of the city, including responses to environmental emergencies. Whenever assistance or mutual aid is requested outside the corporate limits of the city, such response will follow guidelines as set forth in any mutual aid agreements, departmental policies, or as deemed necessary to protect lives and property.

Sec. 3-115. Rules and Regulations

The fire chief is delegated the authority to adopt general orders related to standard operating procedures for the department. Such general orders shall be binding on employees of the department. The general orders may cover uniforms and equipment to be worn or carried, hours of service and similar matters necessary or desirable for the better efficiency of the department. General orders shall not modify personnel policies of the city.

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Sec. 3-116. Status of Members

Each member of the fire department shall have all the responsibility, authority and liability prescribed by statute or ordinances for firefighters.

Sec. 3-117. Entry Upon Adjacent Property

It is lawful for any firefighter acting under the direction of the fire chief or another officer in command to enter upon the premises adjacent to or in the vicinity of any building or other property that is on fire for the purpose of extinguishing such fire, and no person shall hinder, resist or obstruct any firefighter in the discharge of his duty as provided in this Article.

Sec. 3-118. Equipment

The department shall be equipped with such apparatus and other equipment as may be reasonably necessary to maintain its efficiency and properly protect life and property from fire. Recommendations concerning apparatus and equipment shall be made by the fire chief, and after approval by the council, such apparatus and equipment shall be purchased in accordance with the policies and procedures set forth in Article IV of this Code. No person shall use any fire apparatus or equipment for any private purpose, nor shall any person willfully take away or conceal any article used in any way by the department. No person shall enter any place where the fire apparatus is housed or handle any apparatus or equipment belonging to the department unless accompanied by, or having special permission of, the fire chief or authorized member of the department. No fire apparatus or equipment shall be hired out or be permitted to leave the fire station except as authorized or in response to a call for assistance at a fire or other emergency in an area authorized for such assistance or mutual aid under the provisions of Section 3-114.

Sec. 3-119. Firefighter Reserve Unit

The council may, by resolution, create and establish a firefighter reserve unit in addition to the regular fire department. Such reserve unit may be dissolved in the same manner as it is created and established. The firefighter reserve unit shall be organized and structured and its members qualified and determined under such rules and regulations as may be established by the fire chief with the approval of the council. All such rules and regulations shall be subject to the following conditions:

- (a) All reserve unit personnel shall be selected on the basis of merit and fitness under such examinations or conditions as the fire chief, with the approval of the manager, may establish. The fire chief shall require such medical and physical examinations as are necessary to ascertain the physical fitness of all applicants.
- (b) Reserve unit personnel shall not be subject to the personnel policies of the city, nor shall they be entitled to any privileges under such personnel policies.
- (c) All reserve unit personnel shall be appointed by the fire chief with the approval of the manager.
- (d) Such personnel may be suspended or discharged at any time by either the fire chief with the approval of the manager or by the manager alone, with or without cause.

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Sec. 3-120. Adoption of Fire Code

That certain document, three copies of which are on file in the office of the city clerk, being marked and designated as the “International Fire Code, 2006 Edition”, published by the International Code Council, Inc., together with all appendices, amendments, additions, insertions, deletions and changes thereto, as adopted pursuant to City of Maricopa Ordinance #08-04 as the fire code of the city, is hereby referred to and made part hereof as though fully set forth in this Section.

Sec. 3-121. Contract for Fire Protection

In lieu of establishing or maintaining a fire department, the city may enter into an intergovernmental agreement or contract for the provision of fire protection services within the incorporated boundaries of the city.

Sec. 3-122. Contract for Services Outside of City Limits

(a) The fire department is hereby authorized, but not required, to provide service by contract to the following areas not in the boundaries of the city:

- (1) Property completely surrounded by the city, but not within the city’s boundaries; or
- (2) Other property as recommended by the fire chief and approved by the council.
- (3) The fire services described above shall be provided only on the following basis:
 - (i) **Annual subscription fire service rate.** An elective fire protection real estate annual assessment rate per one hundred dollars (\$100.00) assessed value of the property may be established by resolution of the council from time to time.
 - (ii) **Special contract service.** The department is authorized to contract with individuals, corporations, businesses, and other groups for emergency services on an hourly basis, plus administrative charges at rates established by resolution of the council from time to time.
- (4) The fire chief or designee is authorized to represent the city in the administration of individual contracts.

(b) Authority to respond in unincorporated areas; user fee for such response.

- (1) The department is hereby authorized, but not required, to provide service to unincorporated areas when no intergovernmental agreement or contract has been signed, as recommended by the fire chief.
- (2) A user fee is hereby established to be paid by the property owner of the property to which the department responds. The user fee shall be the same as established for individual response contract service as set forth hereinabove.

(c) Nothing in this Section shall prevent the fire department from rendering service to buildings or property which is owned or operated by other governmental agencies.

Sec. 3-123. Fire Department Fees

All fees associated with the Maricopa Fire Department and its services shall be established from time to time by resolution of the council.

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Sec. 3-124. User Fees for Hazardous Material Incidents⁴

(a) Definitions.

(1) Hazardous Materials mean those elements, substances, wastes or by-products that are defined as such by the City of Maricopa Fire Code or materials whose unintentional release is potentially harmful to the environment or human or animal life, or which pose an unreasonable or imminent risk to life, health or safety of persons or property, or to the ecological balance of the environment as determined by the fire chief or the senior fire official of the City in charge at the scene. These materials include, but are not limited to, combustible liquid, flammable gas, explosives, flammables, poisons, organic peroxides, oxidizers, pyrophorics, unstable reactive matter, water reactive matter, petroleum products, anti-freeze, polychlorinated biphenyls and asbestos,

(2) Hazardous Material Incident means any occurrence, incident, activity, accident or emergency where a release of hazardous materials occurs or is reasonably imminent and where the fire chief or his or her designee has so declared such activity, accident or emergency a hazardous material incident or emergency.

(3) Responsible Party means any individual, firm, corporation, association, partnership, commercial entity, consortium, joint venture, government entity or any other legal entity responsible for a Hazardous Material Incident or any owner, tenant, occupant or party in control of real and personal property from which, onto which or related to which there is a Hazardous Material Incident and their heirs, estates, successors and assigns.

(b) A user fee is hereby established for the delivery of Fire Department and other City services, personnel, supplies, and equipment to the scene of a Hazardous Materials Incident. The user fee and any penalties shall be the same as established by resolution of the Council pursuant to Sec 3-123 of the City Code.

(c) A notice of user fee shall be sent to the Responsible Party by U.S. Mail or by any other method that provides evidence of receipt, representing an add-on cost of the claim for damages of the property, vehicles, clean up, and/or injuries. The claim costs shall be sent to the insurer of the Responsible Party.

(d) In the event the Responsible Party believes an error was made in the assessment of the user fee, the Responsible Party may file a written statement setting forth fully the grounds for their appeal with the city manager within thirty (30) days from the date of the notice sent pursuant to Section 3-124(c). If the appeal does not state a valid basis or is untimely, the city manager shall dismiss, upon written determination, the appeal in whole or in part before scheduling a hearing. For any part of the appeal that is not dismissed, the city manager will conduct a hearing within ten (10) business days of receipt of the appeal and may resolve the appeal based on the merits. The city manager shall issue a written decision to the Responsible Party within five (5) business days of the hearing, which shall be delivered to the Responsible Party via certified U.S. Mail or other verifiable delivery methodology. The decision of the city manager shall be the final administrative remedy available under this Article.

(e) The following entities, properties and services shall be exempt from the foregoing charges:

⁴ Amended Chapter 03 by Ordinance 11-06 adopted 6/21/2011

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- (1) Residents and residential property owners, when the incident or emergency is the result of legal and non-commercial activities.
- (2) Incidents involving City buildings, grounds and/or property.
- (3) Incidents involving Buildings or property which is owned or operated by other governmental agencies.
- (4) Services performed outside the jurisdiction of the City of Maricopa under a mutual aid contract with another municipality or governing agency.

Secs. 3-125—3-200. Reserved

ARTICLE IV. PURCHASING

Division I. Generally

Sec. 3-201 Scope of Article

This Article shall govern the purchase of any goods or services for or on behalf of the city.

Sec. 3-202 Definitions

- (a) *Lowest responsive bid or offer* – shall mean the bid or offer that adheres to the established needs of the city, as expressed in the solicitation for products or services, at the lowest net cost to the city.
- (b) *Most advantageous bid or offer* – shall mean the submitted proposal, offer or bid that conforms most favorably in terms of the requirements for price, delivery, quality or other evaluation criteria as set forth in the solicitation for products or services.

Secs. 3-203 – 3-210. Reserved

Division II. Purchasing Policy

Sec. 3-211 Council Approval; When Required

No purchases shall be made by or on behalf of the city without first obtaining council approval in the following instances:

- (a) Where prior approval is required by this code;
- (b) Where the purchase of the item is not provided in the budget as adopted;
- (c) Where the funds for the purchase are not provided in the budget as adopted;
- (d) For the expenditure of funds in an amount in excess of \$25,000.

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Sec. 3-212 Purchasing Director; Duties

- (a) The purchasing director shall maintain sufficient documentation of all purchase transactions to provide evidence of compliance with the requirements of state and federal law, and the provisions of this Code.
- (b) The purchasing director shall approve or deny all purchase requests and shall report to the council on any purchase requiring council approval.
- (c) The purchasing director shall have the authority to resolve solicitation and contract award protests.
- (d) No purchase or contract for services of any kind or description, payment for which is to be made from funds of the city, shall be made by the purchasing director, or any officer, employee or agent of the city, except in the manner set forth in this Article, and unless said purchase is in accordance with the adopted city budget.

Sec. 3-213 Purchases in General²

- (a) **Purchases under \$5,000.** Whenever any contemplated purchase or contract for services is for the sum of less than \$5,000, the purchasing director may order the item as needed without further formality; however the local preference provisions set forth in Section 3-221 below should be considered.
- (b) **Purchases from \$5,000 to \$10,000.** Whenever any contemplated purchase or contract for services is for the sum of at least \$5,000 and less than \$10,000, the purchasing director shall obtain at least three verbal quotes. Upon review of the quotes, he shall award the purchase or contract to the most advantageous bidder, subject to the provisions of Section 3-221.
- (c) **Purchases from \$10,000 to \$25,000.** Whenever any contemplated purchase or contract for services is for the sum of at least \$10,000 but not more than \$25,000, the purchasing director shall obtain at least three written quotes on vendor letterhead, if possible. He may solicit quotes or advertise for quotes using the procedure provided in this Article. Upon review of the quotes, he shall award the purchase or contract to the most advantageous bidder.
- (d) **Purchases in Excess of \$25,000.** No single purchase or contract in an amount in excess of \$25,000 shall be awarded without prior council approval. Unless otherwise exempted under this Article, all such purchases shall be made in accordance with Section 3-215. The purchasing director shall present the bids obtained to the council and shall report to them on the need for the goods or service and the advantages or disadvantages of the contract and bid proposals.
- (e) **Cumulative Annual Purchases in Excess of \$25,000.** No purchase or contract, in any amount, shall be awarded to any vendor who, as a result of said award, will have exceeded \$25,000 in annual sales to the city without prior council approval. The purchasing manager shall report to the council on the need for the goods or services, the advantages and disadvantages of obtaining the goods or services from the vendor in question and the anticipated annual expenditures with said vendor. Unless the goods or services are to be obtained under a council approved contract, the purchasing manager may request council approve an extension of expenditure authority under this Subsection in an amount not to exceed twenty five percent (25%) of the anticipated annual expenditures with said vendor.

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The purchasing manager may request further extensions of expenditure authority in similar amounts as needed.

(f) **Purchases of Utilities.** Purchases of water, sewer, electrical, and telephone services where the purchasing manager has determined that the services can only be obtained from one provider under Section 214 of this Code are exempt from the requirements of this Section.

Sec. 3-214 Exclusive Service

In the event that there is only one firm or company or individual capable of providing a particular service or commodity and such services or commodities cannot be secured from other persons or companies, the requirement of this Article concerning bidding procedures shall not be applicable. The purchasing director shall make a determination of exclusive service following extensive research and shall maintain documentation of such determination.

Sec. 3-215 Bidding Procedure

Except as provided in Sections 3-214, 3-220, and 3-223, the purchasing director shall follow the procedure set forth in this Section for all purchases and contracts subject to the bidding process:

- (a) A notice or solicitation for bids shall state the date, time and place of opening, and the place and time period within which bids shall be submitted.
- (b) The notice shall state with particularity the goods or services required and shall state the place where specifications may be examined.
- (c) Bids shall be submitted in a sealed envelope clearly identified as a bid on the front of the envelope. Any bid not received within the time period allowed shall be rejected.
- (d) All bids shall be opened in public at the time and place specified, and a tabulation of all bids received shall be posted in city hall for public inspection.
- (e) The purchasing director or the council shall have the right to reject any and all bids and parts of bids and to re-advertise or re-solicit for bids.

Sec. 3-216 Award of Bid

Unless the council or the purchasing director, as appropriate, shall exercise the right of rejection, all goods and services in an amount in excess of \$25,000 shall be awarded to the lowest responsive bidder or most advantageous offeror. In determining the lowest responsive bidder or most advantageous offeror, the council or the purchasing director may consider:

- (a) The ability, capacity and skill of the bidder to perform the contract or provide the service required in a timely manner as specified in the scope of services.
- (b) The quality of performance in previous contracts with the city together with previous and existing compliance with the ordinances of the city.
- (c) The financial resources and ability of the bidder.
- (d) The quality, availability and adaptability of the goods or service.

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(e) Qualities and/or characteristics that the city deems highly desirable which are (i) not offered by another lower bidder and (ii) will result in advantages not previously realized and, therefore, not called out in the bid specification form.

Sec. 3-217 Performance Bond

The purchasing director shall have the authority to require a performance bond, in cash or other form of security approved by the purchasing director, for such amount as the purchasing director may deem sufficient to secure the execution of the contract for the best interest of the city.

Sec. 3-218 Emergency Purchases

In case of an emergency which requires immediate purchases of supplies or services and when time is of the essence, the mayor shall be empowered to authorize the purchasing director to purchase or secure services without complying with the procedures of this Article. A full report of the circumstances of such emergency and the goods obtained shall be made to the council at its next regular meeting.

Sec. 3-219 Forms

The purchasing director shall prescribe and maintain such forms as may be necessary for the proper administration of this Article, including but not limited to the following:

(a) **Bid Specification Form.** The bid specification form shall state the specifications for the goods or service required and shall be available for inspection by prospective bidders as of the first publication of the notice of bid.

(b) **Notice to Bidders.** The notice to bidders shall set forth the goods or services sought, the day, time and place when bids will be opened, the dates and times within which bids will be received, when specifications may be reviewed and where available and such other information as may be required to secure the most advantageous bids.

Sec. 3-220 Professional and Technical Services

(a) The provisions of Section 3-215 of this Article, unless required by law or contract, shall not apply to the procurement of professional or technical services, but the purchasing director shall determine the scope of the services required and may, at his option, require the submission of proposals prior to engaging such services. For the purposes of this Article, "professional or technical services" means those services requiring specialized knowledge, education, skill or expertise and where the qualifications of the person(s) rendering the services are of primary importance. Professional and technical services shall include, but not be limited to, services provided by architects, attorneys, accountants, construction and project managers, dentists, design professionals, engineers, geologists, physicians, nurses, psychologists, teachers, veterinarians and health care providers, which provide a combination of professional and paraprofessional services or any other professions and services defined as professional services by state law.

(b) No person or firm practicing in a professional or technical field for which a license is required by state law shall be engaged by the city unless possessing a current license in good standing.

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(c) Upon engagement the city shall enter into a written agreement or memorandum of understanding for the performance of the services for which engaged, setting forth the scope of services and the unit or total price therefore.

(d) Professional and technical services shall be procured in accordance with federal or state law whenever applicable.

Sec. 3-221 Local Preference

In awarding contracts for supplies, equipment and contractual services of an estimated value in the amount of less than \$10,000, the contract shall be awarded to bidders who have both a verifiable place of business located within the municipal limits of the city and a business license from the city for a period of not less than six months prior to date of award of contract in preference to a competing bidder whenever the bid of the competing bidder, with equal quality and suitability considered, is less than five percent lower. This preference shall not be used where state law or any applicable federal statute or regulation forbids the granting of such preference, or requires another method for competitive bidding. This Section shall not apply to contracts for professional services pursuant to this Article, nor to purchases made pursuant to Section 3-223 of this Article.

Sec. 3-222 Purchase Orders

(a) **In General.** The purchasing director shall provide forms of purchase order which shall be used for the purchase of all goods and services for or on behalf of the city.

(b) **Open Purchase Orders.** Open purchase orders may be provided by the purchasing director for the routine purchase of regularly supplied items. An open purchase order shall be limited to a single source and shall not be valid for more than \$5,000 in the aggregate. All open purchase orders shall expire at the end of the fiscal year of issuance and the expiration date shall be plainly stated on the face thereof.

Sec. 3-223 Cooperative Purchasing

This Article shall not apply to purchases made by, through or with Agencies of the United States Government, the State of Arizona or its political subdivisions. The city may make purchases or award contracts for services without a formal bidding process whenever other governmental units have completed a formal bidding process, or updated the underlying contract, for the same item or service within twelve months of the proposed award date and if, in the opinion of the purchasing director, a separate bidding process is not likely to result in a lower price for such items or services.

Sec. 3-224 Promotion of Maximum Practicable Competition

(a) **Maximum Competition Encouraged.** All specifications for bids or proposals shall seek to promote overall economy for the purposes intended and encourage competition in satisfying the city's needs. Specifications shall not be unduly restrictive.

(1) To the extent practicable and unless otherwise permitted by this Section, all specifications shall describe the city's requirements in a manner that does not unnecessarily exclude a specific material, service or construction item.

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(2) To the extent practicable, the city shall use accepted commercial specifications and shall procure standard commercial materials and, absent significant justification, avoid proprietary specifications.

(b) Brand Name or Approved Alternate. Proprietary or brand name specifications shall not be used unless the purchasing director determines, in writing, that such specifications are required by demonstrable technological justification, that it is not practicable or advantageous to use a less restrictive specification, that the use of such a specification is in the best interests of the city, and if the solicitation provides for the submission of equivalent products.

(1) A brand name or approved alternate specification shall designate as many different brands as are practicable as “approved alternate” references.

(2) A brand name or approved alternate specification shall include a description of the particular design, functional or performance characteristics that are required, unless the purchasing director determines, in writing, that the essential characteristics of the brand names designated in the specifications are commonly known.

(3) A solicitation that uses a brand name or approved alternate specification shall explain that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition. The solicitation shall state that products substantially equivalent to those brands designated shall qualify for consideration.

(c) Qualified Products List.

(1) A qualified products list may be prepared and utilized, if the purchasing director determines, in writing, that testing or examinations of the material or construction items prior to the issuance of the solicitation is desirable or necessary in order to best satisfy the city's requirements.

(2) As many potential suppliers as practicable shall be solicited to submit products for testing and examination, to determine acceptability for inclusion on a qualified products list.

(3) Any potential supplier, even though not solicited, may offer its products for consideration in accordance with the schedule or procedure established for this purpose.

(4) The qualified products list shall not be modified after the solicitation is issued.

Sec. 3-225 Construction Projects

(a) Provided the cost of the project exceeds the statutorily established amount, the procurement of both horizontal and vertical construction projects shall be governed by state law. The purchasing director shall consult the Arizona Revised Statutes when procuring goods and services related to construction.

(b) When the cost of a construction project falls below the statutorily established amount, the project shall be procured pursuant to the provisions of this Code.

(c) Alternative delivery methods, such as design bid build, construction manager at risk, design build, and job order contracting, may be utilized for applicable purchases. These purchases must be in compliance with Arizona Revised Statutes.

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Secs. 3-226 – 3-240. Reserved

Division III. Bid Protest; Procedures and Resolution

Sec. 3-241 Protest Procedure

- (a) Any interested party may protest a determination of not susceptible for award or the award of a contract.
- (b) The interested party shall file a protest in writing with the purchasing director including the following minimal information:
 - (1) The name, address and telephone number of the interested party;
 - (2) The signature of the interested party or the interested party's representative;
 - (3) Identification of the solicitation or contract number;
 - (4) A detailed statement of the legal and factual grounds of the protest including copies of relevant documents; and
 - (5) The form of relief requested.
- (c) If the protest is based upon alleged improprieties in a solicitation that are apparent before the offer due date and time, the interested party shall file the protest before the offer due date and time.
- (d) In cases other than those covered in Subsection (c), the interested party shall file the protest within ten (10) days after the purchasing director makes the purchasing file available for public inspection.
- (e) The interested party may submit a written request to the purchasing director for an extension of the time limit for protest filing set forth in Subsection (d). The written request shall be submitted before the expiration of the time limit set forth in Subsection (d) and shall set forth good cause as to the specific action or inaction of the city that resulted in the interested party being unable to submit the protest within the ten (10) days. The purchasing director shall approve or deny the request in writing, state the reasons for the determination, and, if an extension is granted set forth a new date for submission of the filing.
- (f) If the interested party shows good cause, the purchasing director may consider a protest that is not timely filed.
- (g) The purchasing director shall immediately give notice of a protest to all offerors.

Sec. 3-242 Stay of Purchase During Protest

- (a) If a protest is filed before the solicitation due date, before the award of a contract, or before performance of a contract has begun, and a stay is requested by an offeror the purchasing director shall make a written determination to either:
 - (1) Proceed with the award or contract performance; or
 - (2) Stay all or part of the procurement if there is a reasonable probability the protest will be upheld or that a stay is in the best interest of the city.

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(b) The purchasing director shall provide the protestor, the city manager and other interested parties with a copy of the written determination.

Sec. 3-243 Resolution of Solicitation and Contract Award Protests

(a) The purchasing director shall issue a written decision within fourteen (14) days after a protest has been filed under Section 3-241. The decision of the purchasing director shall contain the basis for the decision and a statement that the decision may be appealed to the city manager within thirty (30) days from receipt of the decision.

(1) Such decision shall be delivered to the appellant by certified U.S. mail or by any other method that provides evidence of receipt.

(b) If the purchasing director fails to issue a decision within the time limits set forth in this Article, the interested party may proceed as if the purchasing director had issued an adverse decision.

Sec. 3-244 Remedies by the Purchasing Director

(a) If the purchasing director sustains a protest in whole or part and determines that a solicitation, a determination of not susceptible for award, or contract award does not comply with state statutes, this Code, or purchasing policies and procedures, the purchasing director shall implement an appropriate remedy.

(b) In determining an appropriate remedy, the purchasing director shall consider all the circumstances surrounding the procurement or proposed procurement including:

- (1) The seriousness of the procurement deficiency;
- (2) The degree of prejudice to other interested parties or to the integrity of the purchasing system;
- (3) The good faith of the parties;
- (4) The extent of performance;
- (5) The costs to the city;
- (6) The urgency of the purchase;
- (7) The impact on the city's mission; and
- (8) Other relevant issues.

(c) The purchasing director may implement any of the following appropriate remedies:

- (1) Decline to exercise an option to request a renewal of the contract;
- (2) Recommend that the city council terminate the contract;
- (3) Amend the solicitation;
- (4) Issue a new solicitation;
- (5) Recommend the award of a contract consistent with this Code; or
- (6) Render such other relief as determined necessary to ensure compliance with this Code.

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Sec. 3-245 Dismissal of Appeal Before Hearing

(a) The city manager shall dismiss, upon written determination, an appeal in whole or in part before scheduling a hearing if:

- (1) The appeal does not state a valid basis for protest;
- (2) The appeal is untimely as prescribed under Section 3-243; or
- (3) The appeal attempts to raise issues not raised in the protest.

(b) The city manager shall notify the interested party and the purchasing director in writing of a determination to dismiss an appeal before hearing.

Sec. 3-246 Appeal to the City Manager

In the event the interested party filing the protest believes an error was made in the dispute resolution process and files an appeal within the time frame allowed in Section 3-243, the city manager will conduct a hearing within five (5) business days of receipt of the appeal and may resolve appeals of solicitation or contract award decisions as contested cases based upon the merits of the protest. The city manager shall issue a written decision to the appellant and the purchasing director within five (5) business days of the hearing, which shall be delivered to the appellant via certified U.S. Mail or other verifiable delivery methodology. The decision of the city manager shall be the final administrative remedy available under this Article.

Secs. 3-247—3-250. Reserved

Division IV. Disposal of Surplus Property

Sec. 3-251 Surplus Supplies and Equipment

(a) All departments and offices shall submit to the purchasing director, at such time, and in such form as shall be prescribed, reports showing all supplies and equipment which are no longer used or which have become obsolete or worn out. The purchasing director shall dispose of such supplies and equipment pursuant to the provisions of A.R.S. §9-402.

(b) Surplus supplies may be leased or donated to persons pursuant to a written contract approved by the council, provided that the city receives adequate consideration for the surplus supplies.

Secs. 3-252 – 3-260. Reserved

ARTICLE V. PERSONNEL SYSTEM

Sec. 3-261 Creation and Scope

The council shall adopt a merit system for the employees of the city, the provisions of which shall apply to all employees of the city except elected officials, officers of the city appointed by the council, department heads, persons engaged under contract to supply expert,

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professional or technical services, temporary employees and volunteer personnel who receive no regular compensation from the city.

Sec. 3-262 Conditions of Employment

The appointment, promotion and tenure of every employee shall be based upon the merit and fitness and the satisfactory performance of the duties and responsibilities assigned. No employee or applicant for employment shall be discriminated against on the basis of race, color, religion, creed, age, disability, sex, national origin, genetic testing, or political affiliation.

Sec. 3-263 Rules and Regulations

The council may adopt by resolution rules and regulations to give effect to this Article, which may be modified or changed from time to time, but such rules and regulations shall follow the generally accepted principles of good personnel administration.

Sec. 3-264 Fingerprinting of Prospective Applicants⁵

Each applicant for city employment shall provide to the police chief or his designee, fingerprint identification. The police chief or his designee shall, pursuant to A.R.S. § 41-1750 and Public Law 92-544, forward those fingerprints accompanied by appropriate fees to the state department of public safety and the Federal Bureau of Investigation for the purpose of seeking criminal history information on such applicant. Information obtained shall be used only for the purpose of evaluating the fitness of prospective employees of the city and shall otherwise remain confidential.

Sec. 3-265 Political Contributions

No officer, official or employee of the city shall use any influence or pressure upon any employee to obtain any assessment or contribution of money or time, either direct or indirect, for any political campaign or personal gain.

Secs. 3-266—3-270. Reserved

ARTICLE VI. MEET AND CONFER CODE

Sec. 3-271 Definitions

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(a) *Fiscal year* - means the budget term adopted by the city.

(b) *Business days* - means Monday through Friday excluding holidays as designated by the city manager.

⁵ Amended Chapter 03 by Ordinance 11-11 adopted 9/20/2011

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(c) *Confidential employee* - means any employee designated by the city manager who has access to information regarding relations between the city and its recognized employee organizations including but not limited to information affecting negotiations with the organizations or resolution of complaints or grievances relating to city employment relations issues or who is in a confidential relationship with city management. Employee organization representatives are exempt from this classification.

(d) *Day* - means calendar day except as otherwise stated.

(e) *Employee* - shall mean benefitted full-time and benefitted part-time employees; but shall exclude contracted, temporary, seasonal, or new probationary employees, employees on leaves of absence where the duration of time off is in excess of six (6) months with the exception of employees on military leave.

(f) *Employee organization* - means an organization designated by the city council as authorized to represent employees in the meet and confer process as described in this Code and other codes of the city for the purpose of meeting and conferring relating to wages, hours, benefits and other conditions of employment.

(g) *Management employee* - shall mean any city employee who is engaged primarily in executive, management, supervisory functions, and/or is charged with the responsibility of developing, administering or effectuating management policies. Fire personnel below the rank of battalion chief and police officers below the rank of lieutenant are exempt from this designation. The determination of management status shall be made by the city manager.

(h) *Professional employee* - shall mean any city employee who is engaged in functions, either administrative or technical in an exempt position. Fire personnel below the rank of battalion chief and police officers below the rank of lieutenant are exempt from this designation. The determination of professional status shall be made by the city manager.

(i) *Non-supervisory employees* - shall mean any city employee who does not have authority to hire, discharge, promote, transfer, suspend, layoff, or discipline other employees or to effectively recommend such action, or who is not in a confidential relationship with city management. Determination of non-supervisory and confidential status shall be made by the city manager.

(j) *Petition* - shall mean a form for signatures established by the city manager.

Sec. 3-272 Purpose

The purpose of this Meet and Confer Code is to establish an orderly process to allow regular non-probationary employees and their representatives, who have been certified as the exclusive representative of a particular employee group, to meet and confer with the city manager, or his/her designee, relating to wages, hours, benefits and other conditions of employment.

Sec. 3-273 Conflicts

(a) In the event of conflict with other City Code Ordinance provisions, the provisions of this Code shall govern.

(b) The city's rules and regulations, administrative directives, departmental rules and regulations, and work place practices shall govern employee relations unless there is a specific conflict with a memorandum of understanding approved by the city council

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pursuant to this Code. Where a specific conflict exists, the memorandum of understanding shall govern.

(c) A memorandum of understanding cannot contradict this Code.

Sec. 3-274 Employee Rights

Eligible city employees have the right to be represented by an employee organization certified as an exclusive representative under the provisions of this Code in the meet and confer process contained herein regarding wages, hours, benefits and other conditions of employment, and to have a member of the employee organization present during the disciplinary process. The disciplinary process does not apply to an interview of an employee during the normal course of work, counseling, instruction, informal verbal admonishment or other routine or unplanned contact with a supervisor.

Sec. 3-275 Employee Groups

(a) The maximum number of labor organizations to be designated for employee representation shall be limited to a total of five. Employee groups can include only regular, non-probationary employees. They shall include:

- (1) Fire fighters, all sworn personnel below the rank of battalion chief.
- (2) Police officers, all sworn personnel below the rank of sergeant.
- (3) All clerical, administrative, and technical non-supervisory, non-confidential employees.
- (4) All labor and trades non-supervisory, non-confidential employees (including lead persons).
- (5) Police sergeants.

(b) The following personnel are ineligible for representation under the meet and confer process:

- (1) All sworn Fire personnel above the rank of captain.
- (2) All sworn Police personnel above the rank of sergeant.
- (3) All other city employees who are supervisory (except lead persons), management, professional, or confidential employees.

The human resources director shall submit a list to the city manager of those employees who are supervisory, management, professional, and confidential. A final determination shall be made by the city manager.

Sec. 3-276 Election Process

(a) Each employee organization seeking recognition as the authorized representative of an appropriate group shall file upon demand with the city manager the following:

- (1) The name and address of the organization.
- (2) A copy of its charter, constitution and by-laws, if such documents exist.
- (3) The names, titles, addresses and telephone numbers of its duly elected officers.

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(4) A statement that membership in such organization is not denied because of race, creed, color, sex, disability, national origin, ancestry, religion, age or genetic testing.

(5) A petition requesting designation as the authorized representative of an appropriate group supported by the signatures of not less than thirty percent (30%) of the eligible employees in that group.

(b) Each petition submitted to the city manager shall contain the name of the employee group, the name of the employee organization, signature, printed name, employee number, date of signature, and employee position of each person signing the petition. No signature on a petition shall bear a date greater than ninety (90) days in advance of submittal. If an eligible employee signs more than one petition, then the latest dated signature shall be considered valid.

(c) Petitions for recognition shall be filed during the time period from November 1 to November 30. The city manager shall, within thirty (30) days from receiving the petition, verify the signatures of eligible employees within the designated group and shall then promptly set an election. No election should be directed in any appropriate group or any subdivision within which, in the preceding twelve (12) month period, a valid election shall have been held or under the conditions stated in Section 3-276 (f).

(d) The city manager shall, within thirty (30) days from receiving the petition, verify that thirty percent (30%) of eligible employees within the designated group have signed the petition and shall then promptly post conspicuous notice of receipt of such petition. Once a petition has been filed with the city manager calling for a representation election, other organizations may seek to be placed on the ballot. To do so, the organization must file a petition containing the valid dated signatures of not less than thirty percent (30%) of the employees in the employee group. This petition must be filed no later than ten (10) days after the city manager has posted the written notice. The city manager shall conduct a secret ballot election among the employees in the employee group within thirty (30) days of the posting of the written notice.

(e) Each employee eligible to vote shall be provided the opportunity to choose the employee organization he/she wishes to represent him/her from among those on the ballot, or to choose "none." An organization shall not be listed on the ballot unless the city manager has found a showing of interest as required under Section 3-276(A).

(f) To be certified as an authorized representative, an employee organization must receive a majority of the votes cast. In an election involving three or more choices, where none of the choices receive a majority of the votes cast, a run-off election shall be conducted between the two choices receiving the largest number of votes.

(g) Where a majority of the votes in an employee group cast votes in favor of representation by an organization, the city manager shall certify the organization as the exclusive representative for all employees in that employee group.

(h) After an employee organization has been the exclusive representative of an employee group for at least one year (12 months), any member of the employee group can initiate an election to decertify the exclusive representation by submitting a petition containing not less than thirty percent (30%) of eligible employees in the employee group. If the city manager verifies the petition is valid and in compliance with this Code the election shall be conducted in the same manner as a representation election. Petitions for decertification shall be filed during the time period from September 1 to October 1 of the year immediately preceding the expiration of said memorandum of understanding.

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- (i) Election disputes shall be resolved by a third party, designated by the mayor and city council, whose decision shall be final and binding on the parties.
- (j) The city manager may refer the administration of any election to the chairperson of the merit board or the city clerk.

Sec. 3-277 Right of Employees and Employee Organizations

- (a) Employees have the right to participate on behalf of or engage in activities on behalf of an employee organization and have the right to refrain from such activity. Employees shall be free from any interference, restraint, or coercion by any employee, supervisor, or manager for or against employee organizations. Violations will necessitate disciplinary action.
- (b) There can be only one official and exclusive employee organization for each employee group for purposes of meeting and conferring. An exclusive employee organization must equally and fairly represent all employees as designated by 3-275 and shall provide to them the same voting rights and eligibility to hold office in the employee organization.
- (c) Employee organizations shall have no rights beyond the specific terms of this Code and a resulting Meet and Confer agreement.
- (d) Employee organizations shall have the right to bi-weekly dues deductions, if approved by the members of the organization and as allowed by law. Dues deductions from payroll must be authorized by each individual employee on the appropriate form provided by the human resources department.

Sec. 3-278 Meeting and Conferring⁶

- (a) This meet and confer process covers wages, hours, benefits and other conditions of employment, which include: salary or wage rates or other forms of direct monetary compensation and direct cost subjects; paid time off and procedures therefore; leaves of absence; insurance benefits; total hours of work required of an employee on each workday or workweek, including overtime, compensatory time, rest and meal periods and call-in/call-back; health and safety; training; personnel records review; discussions with personnel by group representatives; distribution of information; meet and confer procedures; city-wide uniform procedure for employee grievances; uniform process for employee discipline; rights of the employee organizations and the city; items of concern to the employee organization and the city manager.
- (b) The following items shall not be included in the meet and confer process: personnel performance evaluations, discipline of employees or hiring, discharging, promotions, demotions, transfers or suspensions. Non-negotiable items include any fact of the hiring, promotion or transfer of employees, the types of discipline or the grounds for demotion, discharge, suspension or discipline.
- (c) It is the right of the city to determine the purpose of each of its departments, agencies, boards and commissions, and to set standards of service to be offered to the public and exercise control and discretion over its organization and operations. It is also the right of the city to direct its employees, take disciplinary action, relieve its employees from duty because of lack of work or for other legitimate reasons, determine whether goods or

⁶ Amended Chapter 03 by Ordinance 11-09 adopted 8/16/2011

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services shall be made, purchased or contracted for, and determine the methods, means, and personnel by which the employer's operations are to be conducted. The city has the right to take all necessary actions to maintain uninterrupted service to the community. The mayor and city council may, at their option and sole discretion, direct the city manager to consult with the city's employees, or their authorized representatives, about the direct consequences that decisions on these matters may have on wages, hours, and working conditions. The enumeration of the above rights is illustrative only and is not to be construed as being all-inclusive.

(d) The city and the employee organization shall have the duty through appropriate officials or representatives to meet and confer in good faith with respect to wages, hours, benefits and other conditions of employment. It is the intent that all meeting and conferring occur only between the parties' respective representatives.

(e) Once all areas of a proposed memorandum of understanding, including areas still in dispute, have been submitted to the mayor and city council, the mayor, city council, city manager, or employee organization may request representatives from both management and the employee organization to provide information and clarification.

(f) Meet and confer shall consist of the following process:

(1) Employee organizations may submit proposals regarding wages, hours, benefits and other conditions of employment to the city manager no later than January 5 prior to each fiscal year. Previously agreed upon multi-year memorandum of understanding shall not require a new submittal.

(2) All proposals submitted to the city manager must be in writing and in a form that can be incorporated into a memorandum of understanding. Unless otherwise provided in this Code and as allowed by law, during the meet and confer process, proposals shall remain confidential except that they shall be available to the city manager, the employee organization representatives, or those designated by the employee group, and others as designated by the city manager.

(3) Upon receiving a proposal from an employee organization, the city manager shall submit a written response to the proposal no later than February 5.

(4) Within ten (10) business days from the receipt of the city manager's response, representatives of the employee organization and the city manager or designated representative shall begin "meeting and conferring" at mutually agreed upon times and places for the purpose of entering into a written memorandum of understanding relating to the proposals. Meetings shall be at least (2) hours in duration, unless mutually agreed otherwise. Meetings shall continue weekly, unless mutually agreed otherwise, until an agreement is reached, or impasse is declared by either party. Meeting ground rules shall be mutually agreed on by the city manager and employee group representative, and shall be adhered to while meeting and conferring.

(5) The city manager or designee, and the representative of the employee organization, shall initial all areas of agreement. Those areas not in agreement may be withdrawn by either party or shall be outlined as areas in dispute.

(i) Both parties shall advise the city council by no later than April 1 that areas of dispute still exists.

(ii) After the City Council is advised by City management of the existence of unresolved issues or areas of dispute, City management and its

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representatives may meet with the City Council to discuss the unresolved or disputed matters and receive further clarification and instruction. Such meetings between the Council and City management and its representatives may take place from time to time between the time negotiations commence and the time of the hearing before the City Council on the mutually agreed upon proposed memorandum of understanding and/or any unresolved areas of dispute. These meetings between the City Council and City management and its representatives shall occur in an executive session pursuant to A.R.S. §38-431.03.

(iii) Either party, or both parties, may request that the city council refer the matter to formal mediation.

(iv) Upon receiving a request for formal mediation from either or both parties, the city council may request that a mediator be assigned forthwith to the case. All costs associated with use of a mediator will be split equally between the city and the employee organization.

(6) On or before May 15, all areas of agreement, areas in dispute and still under consideration, shall be submitted to the mayor and city council for their consideration.

(7) The mayor and city council may accept, reject or modify the recommended areas of agreement within the proposed memorandum of understanding and may take whatever action they feel appropriate with regard to any areas in dispute consistent with the City Code. Final action by the mayor and city council shall constitute the memorandum of understanding for a fiscal year or other designated period.

(8) The parties may mutually agree in writing to extend any deadlines contained in this Section 3-278 and continue negotiations.

Sec. 3-279 Claim of Breach; Process and Resolution

(a) If there is a claim of breach of a memorandum of understanding and the employee organization's existing memorandum of understanding does not provide a process for resolution of the breach, the breach process in Section 3-279(b) shall apply.

(b) In the event that there is a claim of breach of a memorandum of understanding that the employee organization and the city have been unable to informally resolve, the following process shall be followed:

(1) If either party claims that the memorandum of understanding has been breached, the parties shall:

(i) Within forty-five (45) days of the alleged breach, the party alleging the breach shall give written notice to the party who has allegedly breached the memorandum of understanding. The notice shall specify the provision(s) breached and the facts and evidence demonstrating or supporting the breach and the proposed remedy.

(ii) A written response to the alleged breach shall be submitted to the party alleging the breach within ten (10) days of the written notice.

(iii) Within fourteen (14) days of the written notice, the parties shall meet and attempt to resolve the matter; and

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(iv) A written agreement, which is intended to resolve the matter shall be signed by the parties and submitted to the city manager.

(v) In the event that an agreement is not reached and the possibilities of settlement through direct discussions between the parties is remote, either the city manager or his designated persons or the representative of the employee organization may initiate a request to the city council to refer the matter to mediation. Upon receiving a request for formal mediation from either or both parties, the city council may request that a mediator be assigned forthwith to the case. The mediator shall be selected by mutual agreement of the parties. All costs associated with use of a mediator will be split equally between the city and the employee organization.

Sec. 3-280 City and Management Rights⁵

The city and the city manager's rights are not subjugated or diminished in any way by any expressed or implied duty or obligation to meet and confer or bargain. Retained management rights are not subject to the grievance procedure contained in any memorandum of understanding, nor are they subject to any other appeal or complaint process.

(a) The city has and will continue to retain, whether exercised or not, the unilateral and exclusive right to operate, administer, and manage its municipal services and work force performing those services. The authority of the city shall not be modified or limited by inference or implication.

(b) The exclusive rights of the city shall include, but not be limited to, the right to determine the organization of city government, and the purpose and mission of its constituent agencies, to set standards of service to be offered to the public, and through its management officials to exercise control and discretion over its organization and operations, to establish rules and practices governing the conduct of employees, to direct and supervise its employees and their work, to take disciplinary action, to relieve its employees from duty because of lack of work or for other legitimate reasons, to determine the methods, means and personnel by which the city's services are to be provided, including the right to schedule, and assign work and overtime, to hire, transfer and reassign employees and to otherwise act in the interests of efficient service to the community. The city reserves the right to establish and revise work schedules and work locations; to establish, revise and implement standards for hiring and promoting employees; to determine the need for additional positions and the qualifications of new employees, and to determine the qualifications for and/or the qualifications of employees considered for transfer and/or promotion; to evaluate and judge the skill, ability and efficiency and general work performance of employees; to adopt and to manage its budget, provide for the funding of certain levels of service, to add, delete, modify, or suspend certain programs, functions, divisions, and departments as the city council in the exercise of its legislative authority to create and manage the city's budget, determine to be necessary and appropriate.

(c) Nothing herein shall limit the right of the City Council to meet, either in an open meeting or executive session at anytime as long as the meeting is properly agendized, with City Management concerning any issue that the City Council deems relevant to the operation of the City. These meetings may include, but are not limited to, the organization of the City, municipal services, general personnel matters, budgetary issues that impact personnel and any other issue the City Council wants to discuss.

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(d) The city retains all rights not specifically limited by a memorandum of understanding approved in accordance with the provisions of this Code.

Sec. 3-281 Prohibited Activity⁵

(a) An employee, employee organizations or their representative(s) shall not:

- (1) Discriminate against an employee with regard to employee organization membership because of race, color, religion, creed, age, disability, sex, national origin or genetic testing;
- (2) Discriminate against an employee because he/she has chosen not to form, join or assist an employee organization;
- (3) Use city time, property or equipment for employee organization business, except as specified in a memorandum of understanding.
- (4) Obstruct, restrain or coerce any employee, elected or appointed city official in the exercise of any right provided by the provisions of this Code.
- (5) Obstruct, restrain, threaten or coerce any elected or appointed official, representative of the employer or city employee, for the purposes of gaining a concession;
- (6) Disclose or discuss any matters concerning the meet and confer proposal with City elected officials or the news media from the date negotiations commence until the date and time set for hearing before the city council on the mutually agreed upon proposed memorandum of understanding or until the date and time set for a hearing before the city council on the areas of dispute.
- (7) Refuse to meet and confer in good faith with the employer;
- (8) Refuse or fail to comply with any provision of this Code;
- (9) Coerce the employer in the selection of its agents for bargaining or resolving grievances;
- (10) Under no circumstances shall a city employee, official, and employee organization or any other individual or employee organization engage in, instigate, promote, cause, sponsor, condone, permit, encourage, or take part in any strike, slowdown, sympathy strike, withholding of services, work stoppage, curtailment of work, reduction of work or interference of any kind with the operations of the city. Strike shall mean concerted action of employees and/or others resulting in the failure of employees to report for work when directed to do so, the concerted absence of employees from their positions, the concerted stoppage of work and/or concerted slowdown of work, or the concerted effort to refrain from the full, faithful, and proper performance of the duties of employment with the city. In the event of a violation of this subsection, an employee organization shall immediately instruct the involved employees that their conduct is in violation of this section and/or any applicable memorandum of understanding; that the employees may be disciplined up to and including termination, and instruct all such persons to cease the prohibited conduct and take all reasonable means to end the breach.

(b) City management and its representatives shall not:

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- (1) Discriminate against an employee with regard to employee organization membership because of race, color, religion, creed, age, disability, sex, national origin or genetic testing;
- (2) Discriminate against an employee with regard to terms and conditions of employment because of the employee's membership in an employee organization;
- (3) Obstruct, restrain or coerce any employee in the exercise of any right provided under this Code;
- (4) Dominate or obstruct the formation, existence or administration of any employee organization;
- (5) Discriminate in regard to hiring, or any term or condition of employment in order to encourage or discourage membership in an employee organization;
- (6) Discharge or otherwise discriminate against an employee because he/she has signed or filed a Petition, grievance or complaint or because an employee is forming, joining or choosing to be represented by a labor organization;
- (7) Obstruct, restrain or coerce any employee, elected or appointed city official, representative of the employee organization, for the purpose of gaining a concession.
- (8) Disclose or discuss any matters concerning the meet and confer proposal with the news media from the date negotiations commence until the date and time set for hearing before the city council on the mutually agreed upon proposed memorandum of understanding or until the date and time set for a hearing before the city council on the areas of dispute.
- (9) Refuse to meet and confer in good faith with the exclusive representative;
- (10) Refuse or fail to comply with any provisions of this Code;
- (11) Coerce the employee organization in the selection of its agent for meeting and conferring or adjustment of grievances.

Sec. 3-282 Solicitations and Distributions

- (a) Specific provisions regarding use of working hours for the solicitation of members, dues and other internal employee organization business shall be conducted only during nonworking hours and shall not interfere with the work process unless otherwise agreed to in the memorandum of understanding.
- (b) Specific provisions regarding the use of working areas or use of city equipment and information systems, for the solicitation of members, dues and distribution of other employee organization business shall be included in the memorandum of understanding.

Secs. 3-283—3-900. Reserved

End of document